

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
State of Florida)	File No. 0005902069
)	
Request for Waiver of Intercategory Sharing)	
Freeze in the 800 MHz Frequency Band)	

MEMORANDUM OPINION AND ORDER

Adopted: June 20, 2014

Released: June 20, 2014

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

1. On August 20, 2013, as part of a larger application, the State of Florida (Florida) sought a waiver of the freeze on intercategory sharing¹ to license two Business/Industrial/Land Transportation (B/ILT) channel frequencies in the Eustis, Florida area.² In its waiver request Florida states that a waiver is warranted because there are no available public safety channels available for licensing at its Eustis site. For the reasons stated below, we deny the waiver request.

2. In support of its waiver request Florida states that it incorporated the requested B/ILT frequencies into its statewide channel plan in February 2013.³ It asserts that, due to the complexity of its system, it could not accommodate subsequent changes to its channel plan without significantly affecting its 800 MHz rebanding schedule.⁴ However, subsequent to Florida “freezing” its channel plan but prior to it filing its application and waiver request specifying the B/ILT frequencies, a frequency search revealed that public safety channels were available for use at the Eustis site.⁵ Moreover, in February 2014, another frequency search revealed that multiple Vacated Spectrum channels were available at the site.⁶ Florida, however, maintains that these public safety frequencies are unsuitable because, to use them, Florida would have to spend 1-2 years reprogramming 20,000 subscriber units.⁷

3. Recently the Public Safety and Homeland Security Bureau held that it would not grant requests for waiver of the intercategory sharing rule if, at the time the Bureau reaches the request, the premise of the waiver request – that no suitable channels in the petitioner’s service are available – is no

¹ See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (WTB 1995).

² See FCC File No. 0005902069. The state sought a total of 15 frequencies. See also State of Florida Waiver Request, dated July 26, 2013, attached to FCC File No. 0005902069 (Waiver Request).

³ Waiver Request at 2.

⁴ *Id.*

⁵ *Id.* See also Letter dated August 12, 2013 from Carol DiCaro, AFC Processor APCO International, Inc. to Federal Communications Commission, attached to FCC File No. 0005902069 (2013 Frequency Search Letter).

⁶ Letter dated February 10, 2014 from Carol DiCaro, AFC Processor APCO International, Inc. to Federal Communications Commission, attached to FCC File No. 0005902069 (2014 Frequency Search Letter)

⁷ Letter dated February 5, 2014 from Leon Simmonds, SLERS Frequency Manager, Florida Department of Management Services, Division of Telecommunications to Federal Communications Commission, attached to FCC File No. 0005902069.

longer factually correct.⁸ Furthermore, Commission precedent holds that an applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁹

4. It is clear that at the time Florida filed its waiver request and application it knew the premise that no public safety channels were available was no longer correct. Indeed, Florida has even failed to demonstrate that no public safety channels were available when it “froze” its frequency plan in February 2013. Thus, when Florida created a frequency plan that required a waiver of the Commission’s rules, it assumed the risk that the waiver would be denied for failure to meet the Commission’s waiver criteria. That has come to pass. Merely detailing for us the magnitude of the risk Florida decided to undertake is insufficient to warrant grant of the waiver.

5. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, that the waiver request filed by the State of Florida in connection with application FCC File No. 0005902069 IS DENIED.

6. IT IS FURTHER ORDERED that FCC File No. 0005902069 SHALL BE PROCESSED consistent with this *Order* and the Commission’s rules.

7. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

⁸ See Weld, County of, *Memorandum Opinion and Order on Reconsideration*, DA 14-718, rel. May 27, 2014.

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).